

Appendix B: Transcripts from public hearings.

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Public Hearing #1: Marysville, WA September 25th, 2012

Bari Schreiner: I am Bari Schreiner, hearing officer for this hearing. This evening we are to conduct a hearing on the rule proposal for Chapter 173-182 Washington Administrative Code Oil Spill Contingency Plan. Let the record show that it is 6:41 P.M. on September 25. Ecology is holding this hearing at the Holiday Inn Express Skykomish Room 8606, 36th Avenue NE, Marysville, Washington 98270. This hearing is also being held using webinar and phone conferencing. A legal notice of this hearing was published in the Washington State Register September 5, 2012, Washington State Register #12-17-073. In addition, notices of the hearing were emailed to over 2,000 interested parties. Ecology also issued a new release on August 15th and on September 19th. Notice was also published in the following papers on September 23rd: The Everett Herald, The Columbian and Tri-City Herald. We are going to start here in the room. The first person I have signed up is Chad Bowechop.

Chad Bowechop: Good evening. I am Chad Bowechop. I am the manager of the Makah Office of Marine Affairs and we do have some comment that we'll be able to provide this evening, but we also have a more detailed comment letter that we'll turn in before the deadline. It was important enough for the Makah Tribal Council to participate in this rule making process as well as lobbying for the legislature because as we all understand, maintaining and elevating the State of Washington's capability to respond to a catastrophic oil spill is of paramount importance to all of us in this room. And having said that, I would like to acknowledge the spills program for working through the rule making process, as well as acknowledging the stakeholder participation. We learned earlier on, and I am pretty sure it was after the Dalco Pass, that the governor created a review process and I recall that that process was consensus driven and her reasoning for that was because that was the Washington way. And I remember thinking how on earth are we all going to come to agree on how to move forward with this thing. But I have been involved in a couple other rule making processes since and I think what it clear to at least me and how I counsel the tribal council is if we don't address these issues with our partner State of Washington, and in other cases the federal government, and that is an issue we attempt to view in a more holistic manner. There are directly related issues in federal and state authorities that I think would behoove us if we could put it all under one lens, it would improve our mutual capacity considerably. But having said that, it's important that we take the time to participate in these processes and articulate our interests and by and large I believe by the time we're done, we at least have a clearer understanding of what our partner's position is and then what the other stakeholders the realities of their positions are. And I honestly believe it behooves us all to work together and develop a mutual agenda. I think the State of Washington has an absolutely advanced spill response program. Is there room for

improvement? Ya there is, that is why we are here. Having said that, through the course of the rule making, the Makah Tribal Council had concerns that we weren't sure how to operate in such a technical forum and to develop the assurances our treaty interests would be acknowledged and integrated into the process.

Let me back up a step. We were fortunate enough to secure the services of Elise DeCola and Nuka Research and that provided us a fresh set of eyes in regards to how do we view this rule making process. And the report that we were able to integrate into our comments and we'll show in our comment letter is very supportive of the process. That is not to say there aren't some critical observations, but I believe that's healthy. We were concerned by and large because we are in a capacity building process through the Office of Marine Affairs. We've been trying to catch up to this curve of how does the State of Washington work with the other stakeholders to develop the safety regime to address oil spill pollution and what we came to understand is the BAPs can be a very effective mechanism in regards to how do we not only define what is in front of us, but by including them, the requirements for them to be in the planning standards creates that motivation to keep at least up to the curve and possibly ahead of the curve. So we support that completely and that answers a couple questions for us. One is how do we keep involved in this process. I personally was uncomfortable with the five year re-up of the BAPs. I thought it should be reduced to three. But what I am more concerned is that we have the ability to continue to contribute to this process. There will be, I will go out on a limb and say there will be improvements at Makah sooner than later that will have direct bearing on how this rule making is executed and that brings up the next point. This is a very substantial rule making. It is on a very aggressive time line and I think through the rule making process I think that comment was made a number of times, how do we develop a meaningful rule in such a tight time constraint. We're very interested in building in the assurances that these rules are meaningful to all of us, not just singular parties. That begs the next question. Does the spills program have the resources to keep up with these aggressive deadlines. And then not only that, but to develop the regulations and enforce those regulations. So we are moving, we are ratcheting the game up and the direct question from the Makah Tribal Council is will we see a commensurate increase in the spills program's budget to reflect the findings that come out of this process. We are very comfortable with BAPs. We're interested in linking BAPs to the operating environments. The time line for BAPs is of concern to us. And then the VoO time line is something we're confident we can contribute at a very high degree in regards to improving that program. I can't pull it out of my hat. Other issues that we have are, actually we answered I believe in the Group 5 oils. We are concerned with increase of vessel traffic in our treaty area and any action that may affect that will have our direct attention. Having said that, it's been a learning experience for this rule making. It was in supporting the legislation and seeing this process develop into the rule making, I had a lot of questions personally. I wasn't sure how this would move forward. Would it forward to the tribal council's satisfaction and I have to say it was as much of a learning process for me. It's not so much that the process was lacking, it was as much I didn't understand it. And so I am glad to say I understand it a little bit more. We put these pieces, progress to us is very incremental and as we put these pieces together, that provides us an elevated viewpoint that we're able to look across, you know, the bandwidth to say all of our interests being addressed and this is, I believe, a very good start.

Bari Schreiner: Thank you. Next we are going to go to the webinar with Lovel Pratt.

Lovel Pratt: Hi, can you hear me okay?

Bari Schreiner: Yes.

Lovel Pratt: Hi, my name is Lovel Pratt and for the record I am a council member on the San Juan County Council and I participated in a rule advisor committee as an alternate representing the Washington State Association of Counties and I want to thank you for this opportunity to testify here tonight. I just sent an email and I'm hoping that this can be included for the record with my verbal testimony. It includes a comment letter that was signed today by the San Juan County Council unanimously and my testimony will largely be based on that letter. It also includes a comment letter from San Juan County's Marine Resources Committee and some accompanying documents and it also includes some science documents that support some of the information included in the council's comment letter. And then it also includes links to several other documents that I would like to have included for the record. And can I ask if that was received electronically?

Bari Schreiner: I think all the staff who are here were traveling for the hearing today, so they haven't had a chance to confirm that yet.

Lovel Pratt: Okay, but is that something that can be included with my testimony?

Bari Schreiner: If it was written comments submitted, it would be included as part of the public comment, as part of the formal record.

Lovel Pratt: Okay, okay. I would like to start with an outline of what is included in the council's comment letter and then go back and provide some more details. In summary, the Oil Spill Contingency Plan Rule must require that the appropriate, best achievable technology and best achievable protection containment and recovery gear and personnel be response ready and on site in a timely manner to respond to spills of oils that can sink, including diluted bitumen and bunker fuels and all products from Alberta Tar Sands. In addition, the rule must specify that Alberta Tar Sands products including diluted bitumen and all forms of synthetic crude are subject to the Oil Spill Contingency Plan Rule. The contingency plan rule must define San Juan County as a staging area and must specify the two, three, four and six hour planning standards be residents, must require that all contingency plans, technical manuals and planning standards be publically available on Ecology's website and require the public notification review and comment be provided for on all proposed changes to contingency plan technical manual and planning standards. In summary, with regard to the Cost, Benefit and Least Burdensome Alternative Analysis, I first of all want to commend this report. Section 1.6 is the only place in any of the documents related to the rule that address the emerging risk from sinking oils. And this is of huge concern to us in San Juan County. And so we commend the Cost, Benefit and Least Burdensome Alternative Analysis for including this information and it must be retained and expanded. In addition, the cost included in section 1.6 discusses the cost of the diluted bitumen spill in Michigan, the 2010 Kalamazoo River spill and those costs should be updated when the cost, benefit and least burdensome alternative analysis is updated and the fact that these are costs to date be included in the document. The cleanup is ongoing. This must include the significant cost that can be associated with very small spills and I will elaborate on that later, must quantify the value of a

southern resident Orca whale, which is federally listed as endangered, must include hourly cost savings of reducing spill cleanup costs over the duration of the spill in both the appendix B and in the text, must quantify the data provided by San Juan County, our economic development council and our San Juan Island Visitor's Bureau. And there are two items here that are not included in the council's letter that I was only able to confirm just before the hearing tonight. One item is that I was able to confirm that the cost, benefit analysis doesn't currently include is the cost associated with spills of Alberta Tar Sands products, which cleanup of spills of diluted bitumen in those sorts of products are incredibly expensive. And then the other item that's missing in this report in the secondary impact to interruption to the ferry service as the result of a spill, including avoided losses in tourism and avoided losses in commuter travel, which would include lost wages and lost employment. If I was standing before you in person tonight, I would probably bring along a map of the Salish Sea and point out San Juan County, which is central, at the center of the major shipping channels which are very narrow with very strong currents and navigational challenges and a major spill in the waters surrounding San Juan County would just be devastating, both environmentally and economically. Improving oil spill prevention, readiness and response is a top legislative priority for the San Juan County Council. It is hugely important to our constituents here and we are very concerned about the risk of a major spill in the water surrounding our county. We are taking a very active role to improve oil spill prevention readiness and response. And we just feel that prevention of course is imperative, but also imperative is a strong and immediate response to a major spill with the appropriate equipment and personnel. I talked about the emerging issue of sinking oils. We're concerned that the new section on group size oils, I mean, it is good to understand that there's a typing requirement in the State law that's not addressed federally, but we're very concerned that we also need to address oils that aren't necessarily designated as group size, but can sink and these include the diluted bitumen and other Alberta Tar Sands products and also bunker fuels used for propulsion. In San Juan County, we face the increased risk of a major spill with the proposed additional shipping traffic for the both the transport of coal and diluted bitumen. There is the proposed Gateway Pacific Terminal Project, which would include approximately 1,000 transits of boat carriers in the waters surrounding San Juan County and then in addition to the coal cargo that it carries, each of these carriers will contain up to four million gallons of persistent bunker fuel for propulsion. Currently, there is approximately two billion gallons per year of diluted bitumen that's transported out of Canada and some of this product goes to Tacoma, to the refinery in Tacoma via Rosario Strait, but the majority travels to California and Asia by way of Haro Strait. The transport of this product poses an existing risk of a major spill, but Kinder Morgan has proposed to increase their exports, basically to triple their exports and this would increase the crude oil tanker coal transiting Haro straight by over 300 percent by 2016. So this is a significant concern for us in San Juan County. We would definitely like to see the Cost, Benefit and Least Burdensome Alternative Analysis addressed with significant cost associated with Alberta Tar Sands products should they be spilled. It was noted in that report that in the past decade the average crude oil spill costs approximately \$200 per barrel to clean and this 2010 diluted bitumen spill in Michigan, the cost to date is \$29,000 per barrel. So, significant difference in cost associated with the Alberta Tar Sands product spills. So that brings us to the need that we see to identify San Juan County as a staging area and require that as well as the two and three hour planning standards that currently are required to be residents, that the new four hour and the existing six hour planning standards be residents in San Juan County. And we feel that this is important in order to address where we see a significant gap in spill response capacity in Haro Strait in particular, which is where there is significant shipping traffic existing and where that is

where the proposed increases would impact Haro Strait as well. One of the things that we specifically request is that in the Cost, Benefit and Least Burdensome Analysis that the hourly cost saving is currently on a daily basis, but to include the hourly cost savings of reducing spill cleanup costs over the duration of a spill. And I think this will demonstrate the importance of having spill response equipment more readily available to respond to areas. Haro Strait is particularly important because this is the primary feeding ground for the southern resident Orca whale and their entire food chain on the west side of San Juan Island and in my email I sent supporting science documents that speak to that issue. I want to talk about costs associated with very small spills. Case in point is the deep sea spill. Granted that there were millions of dollars in costs of that spill, the pollution response, vessel salvage and the vessel deconstruction cost that would not be applicable in the Oil Spill Contingency Plan Rule, but there was at least a cost of \$1,210,000 in revenue losses to the Penn Cove shellfish business. They estimated their losses at \$55,000 per day and there were 22 closure days. There certainly is a quantifiable loss associated with a closure of Grasser's Lagoon in Penn Cove, which is one of the most popular beaches in Washington State for recreational shellfish harvesting. And when I last contacted the Department of Ecology, they weren't able to give me the volume amount of the spill, but it is very small, but a very large cost associated that. That should be addressed in the Cost, Benefit and Least Burdensome Alternative Analysis. We are also advocating for greater transparency. There is just no reason why all of the associated documents related to the contingency plans, the technical manuals, the planning standards, they should all be readily available on Ecology's website and there should be very clear and transparent procedures in place for public notification and review and comment on all these documents whenever they're initially proposed or whenever changes are made. And I think that in closing that I just want to say that, you know, Washington State has this incredible, very admirable spill prevention and response record. And I want to say that I truly appreciate the high caliber of the spill response community that we have here in Washington State. But just because we have not had a catastrophic oil spill recently, doesn't mean that we should not be better prepared to respond to one. It's incumbent on Ecology to set a high standard and do all that can be done to prevent a major spill and to be best prepared to respond in the event of a major spill. And the more quickly and more effectively we can respond to a major spill, that will determine the difference between temporary and lasting economic and environmental impact. Ecology has concluded that the likely benefits of the rule exceed its likely cost and the investment in additional, best achievable technology and best achievable protection spill response capacity beyond what is included in the current draft is warranted. With that, thank you very much for this opportunity to testify.

Bari Schneider: I just wanted to confirm, to let you know that we did receive your email. We checked while you were testifying.

Lovel Pratt: Wonderful. Thank you very much.

Bari Schneider: You're welcome. Next up we have Fred Felleman.

Fred Felleman: Hello, my name is Fred Felleman. I'm the Northwest consultant for Friends of the Earth and have had the pleasure to be consultant to local and tribal governments and several NGOs over the past couple of decades with my company, Wildlife and Visual Enterprises. These

comments reflect just a preliminary bit of my written comments that shall follow and I would, I guess, just like to start in terms of having had the pleasure of staffing during the _____ process. I appreciate the time and effort Ecology has put into getting the draft to this level of thoughtfulness, however, as you note in the notice that this is the opening for the public comment and hope that you are open-minded to the comments that you will receive from this point forward. One of the things that is of some concern to me is as mentioned, that with the additional rules, additional burdens on the agency, the number of people in this room and online suggests to me that Ecology may not be doing enough to elevate public awareness of these public opportunities, which will be critical for public support if you were to be able to have your budget reflect your added responsibilities. And as has been said, the only reason we were able to overcome significant opposition to raising this bar was because it occurred on the heels of the BP oil spill in the Gulf. We are now two years post spill and we have now this much elevated awareness about the risks that 1,000 additional bulkers transits through our waters if the Gateway Project gets built and the tripling of the Transmountain Pipeline that has been mentioned. These are things, you know, that the public is intensely interested in and the inability for Ecology to connect these dots I think is a reflection of the location of the meeting. Being north of Everett in the evening also is not exactly conducive to public participation and certainly not for the Jewish faith for tonight is probably the holiest date of the Jewish religion. And this is not the first time that there have been Ecology hearings on Jewish holidays. So to be continued, to start off these comments, embracing of BAPs is a wonderful thing and the four hour addition is very important. I like the suggestion that in order to deploy that he will need to have a vessel there and so rather than leaving it to the industry's imagination, why don't we just call for it and make sure that we are assured that there is no room for interpretation, but I would agree that in order for it to be deployed it will need a vessel. But BAP needs to also account for weather conditions, sea states and things like that, so when we are talking about BAP for the coast it is going to be different than BAP in the San Juans or in Nisqually. The key thing that the legislature said was that BAP for spill response, they didn't say for some portion of spill response and since storage has been our greatest weakness, we can't increase our skimming capacity and then not have any place to put the stored oil. So we really need BAP to apply to storage this round and I think a simplest step in that right direction would be to require that for wherever a four hour rule applies, that there needs to be associated mini barge, so that he would then double the storage capacity of the temporary storage associated with the buster type technology. This is the way it is done in Alaska. You can't just have a bladder of oil floating around out there without some place to put it or else you will just be creating more spills. Furthermore, I think that for staging areas, and I would definitely concur with Commissioner Pratt's suggestion that San Juan County deserves to be one given its similar characteristics of Neah Bay being remote and difficult to access and challenging with high volumes of traffic, that this equipment has to be not just dedicated, but resident. And that has to include storage as well as VoO. The fact is for the San Juans, it's probably the easiest place to add this level of requirement because of the excellent working relationship the industry has with IOSA and the fact that there are vessels trained there, making that a requirement is not going to be burdensome, but is important that it's not subject to the whims of the economy, especially in light of the fact that most of this new traffic, if not all of it, will be going through Haro Strait and as the commissioner said, the critical habitat of the killer whale. Currently this year, while the population is hovering around 84, this year they spent the least amount of time in the San Juans since I have been studying them, which is since 1980. And so, we don't have just the problem with the number of whales, but the ability for this area to support them is diminishing. A major spill certainly could

be the death knell to that resident population. I should also say that as a property owner on the west side of San Juan Island I would be personally impacted as well as my life's work on the study and photography and protection of the killer whales. I would also like to suggest that in the cost benefit analysis, not only the point made about really incentivizing those early hours of response where containment is possible and acknowledging the fact that averaging over days at a time is nothing like the first couple of days. I would also suggest that we should also consider the age of the equipment the industry currently has in the amortization of the analysis because one of the great findings of the BP spill in the gulf was the fact that the equipment was aged and in fact, you know, much of the equipment had to be flown in from overseas, the best equipment for Norway. The only place in Washington State that has this kind of equipment is the Navy. They know that this is the best stuff. At this point in time, I would like to make sure that the cost benefit analysis acknowledges the fact that most of our equipment, I believe, is from the 1960s and 1970s. Now, just to wrap up, I believe I have maybe one last point and I guess I would just have to continue to concur with the commissioner over the importance of making sure all these documents are online and notification as well as opportunity for comment is made for any changes to the rule or to the plans or to the manual for making appointments to go and review plans has been a great detriment to public participation that I believe ultimately will hurt the agency that needs to continue to carry the torch as you have done. Thank you.

Bari Schreiner: Thank you. At this time, I want to confirm that there is nobody else in the webinar that has changed their mind. If you have, can you please use the raise your hand feature. Or if there is anybody on the phone that has changed their mind and wants to testify, please press *1. Okay, is there anybody in the room that has changed their mind that would like to come up now? Okay. Sorry, there is one more person on the phone that has changed their mind. Mike Daugherty, we believe you want to provide some comments now. Can you send a message to the webinar moderator to let her know which phone number you're on so that we can un-mute your phone? Okay, we are going to un-mute everyone, just so you are aware if you are on the phone, if you have a mute button if you could push it for a moment. Mike Daugherty, are you ready to provide testimony? Okay, we will try with Mike again in a moment. Right now, Chad Bowechop had additional comments to add.

Chad Bowechop: Ya, thanks for this opportunity to continue our presentation. There are a few point I inadvertently left out. I can't read my own handwriting. And it speaks again to BAPs and for oil storage. This is something that at Makah and in our staging area we know has been an issue for many years. Any we strongly urge this rule making process to engage in a BAP that's applied to oil storage. It's very clear to us that if we are able to apply a technology similar to current Buster if we don't have some place to store it, that defeats the issue or we're not engaging that improvement as critically as we could. We are open to negotiation on this. That is to say, we want to work together to determine the best way to move forward. We strongly support mini barges. We have a severe aversion to using bladders at Makah. We don't believe that to be an adequate measure. We also strongly support the creation of a staging area in the San Juan Islands. For the reasons that were stated, we believe that helps us bridge some of these state and federal issues for the same reasons. I mean, there is heavy vessel traffic, heavy current. It just makes sense to improve the overall capacity.

Bari Schreiner: Thank you. Alright, Mike I believe you are ready to go on the phone now.

Mike Daugherty: Can you hear me?

Bari Schreiner: Yes. Mike, go ahead.

Mike Daugherty: My name is Mike Daugherty. I'm a Clallam County Commissioner and my district is the third, or Western District in Clallam County and Clallam County, as you might know, includes wilderness, beaches, national park system, four tribal reservations with overlapping U&As, actually five or six tribes if you look at some of the overlaps. A lot of the jurisdiction of the Olympic Coast National Marine Sanctuary and the jurisdiction of the Northwest Strait Commission, we have three or four county parks that are on saltwater, so we have quite an interest in a lot of our tourism economy and a lot of the quality of life of our residents relies on clean water. For tonight's purpose, I would just concur on the remarks of all three of the previous speaker's comments and to note that we will submit some written testimony prior to October 4th. Thanks.

Bari Schreiner: Thank you. Check one more time here in the room. Is there anybody that has changed their mind? Check one more time on the phone and webinar.

Fred Felleman: I guess in case something happens to me between now and when I write my letter, this is Fred Felleman once again. I had asked the question earlier and I just thought I could pose it as a finding. I am very much supportive of the State's efforts to define what shoreline cleanup is and to better define what aerial observations are and that while the legislature did direct them to make sure they did this for tank vessels that I encourage them, implore them, urge them to have it applied to all facilities and vessels covered by this overall regulation. Thank you for that.

Bari Schreiner: Check one more time. Anybody in the room that would like to come up? Anybody on the webinar or phone? Okay. Just to remind everyone, if you want to submit written comments, you need to send them and they must be received by 5:00 P.M. October 4, 2012. This information is provided on the handouts that are here in the room and also on Ecology's website, but I'm going to read it now for the record. You need to send them to Sonja Larson, P.O. Box 47600, Olympia, WA 98504-7600. You could email them to spillsrulemaking@ecy.wa.gov or you could fax them to (360) 407-7288.

All testimony received at this hearing held in Marysville, the hearing being held in Vancouver on September 27, 2012, along with all written comments received no later than 5:00 P.M. October 4, 2012 will be part of the official record for this proposal. Ecology will send notice about the concise explanatory statement or CES to everyone that provided written comments or oral testimony on this rule proposal and submitted contact information, everyone that attended today's hearing that provided an email address and other interested parties on the agency's list for this rule. This CES will, among other things, contain the agency's response to questions and issues of concern that were raised during the public comment period. If you would like to receive a copy, but did not provide us your contact information, please let one of the staff at the hearing know or you could contact Sonja at the contact information we provided for submitting comments.

The next step is to review the comments and make a determination whether to adopt the rule. Ecology's director, Ted Sturdevant, will consider the rule documentation and staff recommendations and will make a decision about adopting to proposal. Adoption is currently scheduled for no earlier than December 14, 2012. If the proposed rule should be adopted that day and filed with the code reviser, it will go into effect 31 days later.

On behalf of Department of Ecology, thank you very much for coming today. Let the record show that this hearing is adjourned at 7:24 P.M. Thank you very much.

Public Hearing #2: Vancouver, WA September 27th, 2012

I'm Bari Schreiner, hearing officer for this hearing. This evening we are to conduct a public hearing on the rule proposal for chapter 173-182 Washington Administrative Code, Oil Spill Contingency Plan. Let the record show that it is 3:43 P.M. on September 27th. Ecology is holding this public hearing at the Vancouver Clark Parks and Recreation Marshall Community Center, Elm Room, 1009 East McLaughlin Boulevard, Vancouver, Washington 98663.

A legal notice of this hearing was published in the Washington State Register September 5th, 2012, Washington State Register number 12-17-073. In addition, notices of the hearing were e-mailed to over 2000 interested parties. Ecology also issued a news release on August 15th and September 19th. A notice was published in the following papers on September 23rd: The Everett Herald, The Columbian, and the Tri-City Herald. As of right now, I have six people signed up to provide comments. I will be calling you up in the order that you signed in. When you come up, if you would please have a seat in this chair so we can make sure we get a good recording of your comments and then state your name and if you want to your affiliation. So first we have Bill Collins, who will be followed by Liz Wainwright.

You ready? Yup.

I'm Bill Collins. I am the director of Environmental Health Safety and Security for Tidewater Barge Lines, a terminal company, whose headquarters are located here in Vancouver. My greatest responsibilities also include spill preparedness and response. I would like to thank Ecology for the opportunity to comment on the proposed regulations. I want to start off by stating that Tidewater remains committed to protecting the environment in which we work and to our prevention and response programs. As you know, one of the commodities that Tidewater transports on the Columbia River is non-persistent oil, specifically gasoline and number 2 diesel fuel. We move these petroleum products on the Columbia River between the Portland-Vancouver Metro area, up through Pasco, Washington using double-hold petroleum tanker barges, from which we have never had a spill. While we are certain in favor of and support regulations to further environmental protection, we are concerned that some aspects of the proposed rule seem to be focused more on ocean and Puget Sound based traffic, rather than the river transport of non-persistent fuels that we move here on the Columbia River. Because of the unique nature of the Columbia River and Tidewater's specific business operations, we feel that portions of this rule improperly apply to us

and may potentially adversely affect us. I would specifically like to address two sections of the proposed rule.

First, the aerial surveillance requirements under WAC 173-182-321, which require resources within a six hour response time and to provide specific imaging technology. Some of the issues we have with this are that the aerial surveillance requirements should not apply to non-persistent oils on the Columbia River as the proposed technology will not necessarily be effective for spotting non-persistent oils on a river system. Aerial surveillance technologies are unnecessary on a river system where oil travels at a constant rate and in a predictable direction of river flow as opposed to fanning out based on current wind speed as may be the case in the Sound or on the ocean. And although not certain, Tidewater may be solely responsible for implementing the aerial surveillance program given that we are the only up-river operator to transport petroleum fuels in this area. It is not economically feasible for us to provide and maintain these resources on our own. We request that Ecology exclude tankers from, that carry group 1 non-persistent oils on the Columbia River from the aerial surveillance amendments, or exclude the upper Columbia River from the aerial surveillance amendments all together. For example, using the regions that seem to be defined under the VoO requirements.

The second issue I would like to address are, is the vessel of opportunity program under WAC 173-182-317. The VoO Rule establishes requirements to establish a vessel of opportunity program for various regions in Washington. Our issues with this consist of basically there is not a commercial fishing fleet on the upper Columbia River or on the upper reach of the Lower Columbia River, for example, in the Portland-Vancouver area, and it is doubtful that we would have access to the required number of qualified vessels and operating personnel. Even if a commercial fishing fleet based VoO Program was able to be established using down river resources, such as in Astoria, the vessels would not be able to effectively respond to the Lower Columbia River region where Tidewater transports petroleum products basically from the Portland-Vancouver Metro area and continuing east and tide. It can take several days to arrive on scene. Also, contracting with members of a commercial fishing fleet or recreational boaters in the absence of a commercial fleet could be problematic. Many questions remain regarding the safety and the suitability of the boats which may be used, the spill response training, insurance requirements, drug testing and related issues of liability, all of which would have to be resolved and could be problematic in contracting with Tidewater or any other PRC. Ecology's proposed rules do not consider the VoO Program through membership in the clean rivers coop, which together with its membership already maintains a fleet of appropriate spill response vehicles, or vessels, and an extensively trained membership. We request that Ecology confirm that the upper Columbia River area is excluded from the VoO Rule. The proposed rules seem to exclude it based on a map that's in the rules and I have an e-mail that similarly says the same, but we would like confirmation. We would also like a definition of what constitutes the lower, or the geographical area of the Lower Columbia River. We also ask that the Portland Metro area of the Lower Columbia River region be excluded from the VoO Program. Again, there is already a VoO-like program consisting of the CRC and member vessels that have appropriately trained personnel and suitable vessels which is preferable and that it is a better program and more environmentally sound. With that said, I want to again stress Tidewater's commitment to spill response and prevention programs and to maintaining our excellent record of environmental stewardship on the Columbia-Snake River system. We value our good working relationship with the Department of

Ecology. I sincerely mean that and we certainly value our co-efforts with the other members of the spill preparedness and response partners in the area which we work with and will continue to work with. Our goal again is to ensure that we keep the Columbia and Snake River system a clean and safe environment for all users of the river system. Thank you.

Thank you. Next we have Liz Wainwright, followed by Steven King.

This is kind of interesting. You ready? Yup. Okay. For the record, my name is Elizabeth Wainwright, I'm the Executive Director of the Maritime Fire and Safety Association, MFSA a nonprofit organization serving the Columbia River Maritime community. Those services include providing an umbrella vessel response plan for the Columbia River, approved by the States of Oregon and Washington, a plan that will be greatly affected by the proposed amendment to the Oil Spill Contingency Plan Rule. Thank you for the opportunity to speak today. MFSA appreciates being given the opportunity to participate in this most recent rule making process. We have been engaged in this process, including the informal advisory committee meetings over the last 12 months. During that time we've attended meetings, engaged in discussion and submitted comments with suggestions to improve the rules being proposed by the Department of Ecology. While there has been some movement and some recognition of the Columbia River as distinct from Puget Sound, the rules as published September 5th do not go far enough to address our concerns. Our message now and throughout the legislative and informal rule making process is the Columbia River is not Puget Sound and the planning standards for the Columbia River should be appropriate to the river and the multi-state transportation system. Eighty-eight percent of the vessel traffic transiting the Columbia River district is non-tank vessels carrying discretionary cargo including grains, other bulk commodities, containers and autos that could easily be loaded or discharged at other west coast ports of the United States and Canada. The level and the type of vessel traffic, the worst case discharge volume of 300,000 barrels of refined product, petroleum product, the lack of crude oil product in refineries and the lack of crossing situations all support modification of the proposed rules for the Columbia River. The cost to implement these rules will be shared by fewer than 1500 vessels including tankers and tank barges. Based on our review of the proposed rules, our research and the cost-benefit analysis provided by the Department of Ecology. MFSA as the plan holder will be required to purchase additional equipment, increase the amount of training and exercises annually and retain additional assets and contractors in order to deliver the terms of the proposed rule amendments. As a result, starting in 2013, MFSA will need to double its vessel oil program fees to vessels to cover a doubling of operating and CAPEX cost to meet the requirements of the Oil Spill Contingency Plan Rule now proposed by the State of Washington. That's a 200 percent increase. MFSA is requesting that Ecology modify their proposed amendment to the Oil Spill Contingency Rule to incorporate alternate planning standards into the chapter 173-182 WAC for the Columbia River that are appropriate to the level of risk, cost effective and support the continuation of discretionary cargo movement on the Columbia River and its regional multi-state transportation system. MFSA specifically seeks modification to the Vessel of Opportunity system, aerial surveillance and the four hour planning standard, the current Buster technology through best achievable technology and best available protection appropriate to the Columbia River. MFSA is committed to continuing to work with the Department of Ecology to identify planning standards that are cost effective and appropriate to the Columbia River and to ensure that State requirements protect the Columbia River's economy, quality of life, and natural resources appropriate to the level of risk posed by different vessels and sectors as directed by Governor Gregoire in her letter of

April of last year to the Department of Ecology. Thank you again for the opportunity speak MFSA will be submitting written comments which will include proposed modifications specific to the Columbia River.

Next is Steven King, followed by Jim Keviak, thank you.

My name is Steven King, representing here a board member of the CRSOA, the Columbia River Steamship Operators Association. I'm also a Vessel Agent representing Orion Ship Agency, actively employed helping to operate ships on the Columbia River and elsewhere in the Pacific Northwest. Uhm, I have not had as great a chance to follow the rule making and some of the activities and efforts that have gone into compliance with House Bill Rule 1186. Uhm, just haven't had a change to follow it as closely maybe as I could have. On the other hand, I have a, ahh, that I have to get done being a Ship Agent on the river. So, I think that I, I heard about it coming down the pipe and have been following it loosely and assumed that, we've had a lot of really good luck with rule making and with regulations for our river. We have a lot of people that work hard. You've already heard from some of them here today, to ensure that ah, the best practices and the best procedures are enacted on our river system to help keep the economy on our river and the river itself healthy. And, uhm, I think also I had been active in tracking closely the efforts of the MFSA to really, in my mind, do a lot of the things that, uhm, this bill was focused on and I know that myself and other members of the CRSOA are proud of the MFSA. It's an organization that, uhm, really does a great job of interpreting the risks we feel and enacting things in a, you know, financially responsible way. I understand that some tweaks to conform this volunteer agency to the new regulations might be required, but I was a little shocked to find out, ah, when I looked at some what's actually been proposed on the river system, that ah, these are not little tweaks. At least not at all to us. Uhm, as you heard through previous testimony, ah, 100 or 200 percent rate increase for oil preparedness is a huge financial burden for vessel operators and its not something that can be taken lightly. It effects the financial health of our river overall, uhm, going forward. And, to that end, I want to say that the Columbia River Port is unique. I noticed that a lot of the language seems focused on Puget Sound and Ocean based oil recovery and I wanted to make sure that during the rule making process that the Columbia River is considered for what it is and for the risks that area actually potentially involved on our river system. The three points specifically, uhm, that I want to make sure I get to is that the Columbia River is different and the MFSA is already doing a great job of preparing for, as Governor Gregoire says in her letter to the Department of Ecology, uhm, increasing the States oil recovery capacity by paring the best achievable spill response technology with well-trained personnel. Uhm, that the cost, point number two, could go up 100 percent or I have just heard maybe 200 percent, is no minor tweak. Please, ah, don't think that the financial burden being passed on to vessel operators is, ah, is something that could possibly go unnoticed and that, ah, the cost benefit analysis of the worst case scenario, ah, needs to be balanced against the incremental cost increase. I had a colleague in a meeting, we were talking about this, say the worst case scenario is something that no matter what the catastrophe we would like to be prepared for, but you don't have fire houses that are prepared for the worst case scenario, you don't have, ah, police precincts that are prepared for the worst case scenario, not when you think of the worst case scenario. There is certainly mentally reaching, almost no preparedness you would have that would say there will be no impact from oil on the Columbia River in the worst case scenario. It is not an achievable goal, so we have to use reason to understand what our level of preparedness should be. So, I would encourage, during the rule making process that we are able to use a granular approach

and my main focus is to, uhm, encourage that the rule making does designate different requirements for different regions based on the risk and the costs involved.

Okay, next we have Jim, followed by Mike Schiller.

Hi. My name is Jim Jakubiac, I'm an environmental manager for Schnitzer Steel Industries and a member of the Board of Marine Fire Safety Association. I'm here to testify today on Ecology's pending Oil Spill Rule Making Proposal for the State of Washington. Schnitzer Steel and MFSA strongly support the existing efforts of the U.S. Coast Guard, the Oregon Department of Environmental Quality and the Washington Department of Ecology to protect our water ways, our estuaries, and the entire Northwest from oil pollution. The MFSA organization oversees and implements the River System Oil Spill Contingency Plan, which is approved jointly by both Washington Department of Ecology and the Oregon Department of Environmental Quality. MFSA also works closely in drills with the U.S. Coast Guard at every opportunity. We take our responsibility seriously and have over \$3.3 million worth of booms, skimmers, boats, barges strategically placed throughout the Columbia and Willamette River system network and we are ready to respond when needed with highly trained individuals who practice in drill year after year. With that all being said, the new rules written by Ecology go too far and are not operationally appropriate for the Columbia and Willamette River waterways. We understand Ecology and the Governor's concern for protecting Puget Sound and the initiatives under the Puget Sound Action Agenda as the Governor references in her April 20th, 2011 letter. Unfortunately, one size does not fit all. The oil spill equipment and techniques used for oil spills in the Gulf of Mexico and Puget Sound are not necessarily the operational tools needed for oil spills in the Columbia and Willamette Rivers. MFSA has provided oil spill services in the Southwest River System, dating back to the 80s. Our professional responders have worked on spills throughout the country and know what equipment and what techniques work and have told me that purchasing expensive booms such as current buster or training fisherman who are not rigged for oil spill responses may be nice, but won't be effective for our region. The question then becomes why are we spending resources on equipment and tactics that will not be effective in our region for oil spill responses. Why are we changing what has worked so well for our region over the past decades? In reviewing Ecology's cost-benefit analysis I notice Ecology made several assumptions that minimize or underestimated the actual cause, cost to the organizations and shippers that will be implementing these rules. We need to be honest in our economic analyses and smarter in these tough economic times when we put in place rules that will effect import and export markets, and drive decisions by shippers as they choose ports to which they call. These rules will have significant economic consequences. As the States of Washington and Oregon collaborate time and time again, on regional marine projects, such as the navigational channel maintenance dredging and depending project that are all vital to our regions economic vitality, I was very disappointed that Ecology did not reach out more and get more input from the Oregon Department of Environmental Quality. Or other Oregon and Southwest Marine business who will be significantly impacted by these proposed rule changes. I would also concur and agree with many of the comments submitted by Tidewater Barge Line and Liz Wainwright of MFSA. I encourage Ecology to go back to the drawing board, revisit their proposed oil spill rule, try to be more flexible so common sense, practical and cost effective rules that benefit all of the Washington regions can be implemented. Thank you very much for your time.

Thank you. After Mike is going to be John Hellman.

Good afternoon. My name is Mike Schiller and I work at the Port of Vancouver, USA. I'm also a Board Member for the Maritime Fire and Safety Association. My comments here this afternoon will be brief as the Port is also filing written comments as part of the public comment period. First of all, thanks. Thanks very much for reaching out and engaging. Thanks very much for reaching out and engaging a wide range in community interests this rule making effects. I know the MFSA and others from the Columbia River region have been actively engaged in working on solutions to address this legislation while ensuring that the Columbia River maritime interests remain competitive for cargo transiting the west coast. As I review the proposed final rules, however, I ask that you continue to be open to comments and recommended solutions that may work better for the Columbia River region. I know you understand that the Columbia River serves a broad economics, a broad economic region across our nation. And that rules that impact commerce here in the Columbia River can be felt far back into other regions, in the Midwestern states of the United States. So as Governor Gregoire mentioned in her letter to Ecology in April of 2011, the Port continues to encourage Ecology to engage these Columbia River maritime interests to ensure that those rules addressing the cargo spill ship response requirements minimize the potential impact to discretionary cargo moving through our state. The MFSA which, as you know, operates under an approved bi-state oil spill response plan is committed to developing plans and exercises that will preserve our beautiful region while ensuring that jobs connected to maritime trade continue to grow. Thank you for your consideration.

Next is John.

Thank you. For the record, my name is Johan Hellman, representing, for the record it happens daily, so its no problem. So again, for the record my name is Johan Hellman representing the Washington Public Ports Association. I would like to thank you for the opportunity to provide brief comments this afternoon and for your stake holder process and outreach to date, who will also submit more extensive written comments. I would just echo the concerns raised by Ms. Wainwright, by the MFSA, the Port of Vancouver and by representatives from the maritime community regarding Vessels of Opportunity for our planning standard addressing current buster technology and by the provisions regarding aerial surveillance. These three strategies are uniquely unsuited for use along the Columbia River and would add tremendous expense to the cost of a ship call, along the river. These cost increases would have a dramatic impact on regional trade. The ship call fees and export rates would inevitably increase. By conservative estimate these increases are placed at \$1,100.00, the equivalent of a 220 percent increase for a cargo vessel. And since all the cargo trade along the Columbia River is discretionary, these three provisions would have tremendous detrimental impacts on ports, trade and commerce around the State and across the region. So for these reasons we ask that you continue working with the MFSA and the Maritime Industry and with the Columbia River Ports and the WPPA, my organization Washington Ports Association, to resolve these concerns, particularly with these three areas of the rule, in order to alleviate potential impacts to discretionary trade along the Columbia River. With that, I would like to thank you for your consideration.

Thank you. At this time, is there anyone who has changed their mind and would like to come up and offer comments? Uhm, to remind everyone, if you would like to send Ecology written

comments, please remember they must be received by 5 o'clock P.M. October 4, 2012. I am going to read the address now, but it is also available on the handouts in the back of the room. You can mail them to Sonja Larson, P.O. Box 47600, Olympia, Washington 98504-7600. You can e-mail them to spillsrulemaking, all one word, @ecy.wa.gov, or you could fax them to 360-407-7288. All testimony received at the hearing held in Marysville, the hearing being held here today in Vancouver, along with all written comments received no later than 5 P.M. on October 4, 2012, will be part of the official record for this proposal. Ecology will send notice about the concise explanatory statement, or CES publication, to everyone that provided written comments or oral testimony that also gave us contact information. Everyone that attended the public hearings that provided an e-mail address and other interested parties that are on the agency's mailing list that we use for this rule making. The CES will, among other things, contain the agency's response to issues of concern and questions that were raised during the public comment period. If you want to receive a copy of that, but you did not provide us your e-mail information, please let one of the staff know at the hearing, or you can contact, you can use the contact information for submitting comments to let us know to add you to that list.

The next step is to review the comments and make a determination about whether to adopt the rule. Ecology's director, Ted Sturdevant, will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for December 14th, 2012, sorry, no earlier than that date, and if the proposed rule should be adopted that day and filed with the code reviser, it goes into effect 31 days after that. If we can be of any further help to you today, please let us know. Thank you very much for coming. Let the record show that this hearing is adjourned at 4:11 P.M.